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2 NOT FOR PUBLICATION

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6 **IN THE UNITED STATES DISTRICT COURT**

7 **FOR THE DISTRICT OF ARIZONA**

8

9 Jim D Smith,  
10 Appellant,  
11 v.  
12 Barbara Louise Braden,  
13 Appellee.

No. CV-19-02707-PHX-DJH

14

**ORDER**

15 This matter is before the Court on appeal from the United States Bankruptcy Court  
16 for the District of Arizona (the “bankruptcy court”). This Appeal arises from the  
17 Bankruptcy Court’s denial of a homestead exemption for Barbara Louise Braden (the  
18 “Debtor”), which was not contested by the Chapter 7 Trustee appointed to administer her  
19 estate, Jim Smith (the “Trustee”). (Doc. 1).

20 The Trustee has filed an Opening Brief, to which the Debtor has not responded.  
21 (Doc. 9). An Order to Show Cause was issued to the Debtor, setting a deadline by which  
22 she could appear in this matter. (Doc. 11). She did not respond. As this is an appeal of a  
23 bankruptcy court decision regarding her estate, the Court may not proceed to grant the  
24 relief requested by the Trustee by default. Therefore, the Court must analyze the merits of  
25 the Trustee’s arguments without the benefit of a Response.

26 **I. Background**

27 Debtor filed a voluntary Chapter 7 Bankruptcy on April 8, 2011. (Doc. 1). On  
28 March 15, 2019, the Trustee filed an “Application for Entry of Order Allowing Debtor’s

1 Claim of Homestead Exemption” (the “Application”) with the bankruptcy court. (*Id.*) In  
 2 accordance with Bankruptcy Code, the Trustee sent notice of the Application to all (more  
 3 than 50) of Debtor’s Creditors and other interested parties. (Doc. 10 at 9). The bankruptcy  
 4 court received no objections to the allowance of the homestead exemption and the Trustee  
 5 filed a report of no objection with the bankruptcy court. On April 18, 2019, the bankruptcy  
 6 court denied the Application. (Doc. 1 at 7). The order entered by the bankruptcy court is  
 7 actually the same proposed order submitted by the Trustee with language seeking to *grant*  
 8 the Application. (*Id.*) However, the word “DENIED” appears on top of the text of the  
 9 Order, and is followed by a single explanatory sentence, “11 U.S.C. section 522(g)  
 10 precludes the debtor from asserting a homestead exemption in this case.” (*Id.*) The Trustee  
 11 appeals the bankruptcy court’s denial of the Application.

## 12 **II. Standard of Review**

13 An order “denying a claim of exemption finally determines the discrete matter to  
 14 which it was addressed, determines and seriously affects substantial rights and can cause  
 15 irreparable harm if the losing party must wait until bankruptcy proceedings terminate  
 16 before appealing.” *In re Gilman*, 887 F.3d 956, 961 (9th Cir. 2018). Therefore, an order  
 17 denying a claim of exemption is an order that may be appealed to the district court. *Id.*

18 In appeals of bankruptcy decisions, the court reviews the “issue of a debtor’s intent,  
 19 along with other factual findings, for clear error.” *Id.* at 964. “Factual findings are clearly  
 20 erroneous if illogical, implausible or without support in the record.” *In re Retz*, 606 F.3d  
 21 1189, 1196 (9th Cir. 2010). “Whether property is included in a bankruptcy estate is a  
 22 question of law . . . subject to de novo review.” *In re Smith*, 342 B.R. 801, 805 (B.A.P. 9th  
 23 Cir. 2006).

## 24 **III. Homestead Exemption**

25 The commencement of a bankruptcy case creates an estate comprised of all legal  
 26 and equitable interests in property, including potentially exempt property, of the debtor.  
 27 11 U.S.C. § 541. When a debtor files a bankruptcy petition, all of his assets become  
 28 property of the estate and may be used to pay creditors, subject to the debtor’s ability to

1 reclaim specified property as exempt. *Schwab v. Reilly*, 560 U.S. 770, 774 (2010). A  
 2 debtor in bankruptcy is entitled to exempt certain assets from the estate, and one of those  
 3 exemptions is the homestead exemption. 11 U.S.C. § 522. This means that a certain  
 4 amount of the equity in the debtor’s home will be kept by the debtor and is not subject to  
 5 creditors. This longstanding exemption exists so that a debtor can exit bankruptcy and start  
 6 anew and “to ensure that debtors and their families do not become homeless.” *In re*  
 7 *Jacobson*, 676 F.3d 1193, 1200 (9th Cir. 2012). Arizona has elected to “opt out” of the  
 8 federal exemption scheme and create its own exemption statute; therefore, Arizona law  
 9 governs homestead exemptions. A.R.S. § 33–1133.

10 A claimed homestead exemption is “presumptively valid.” *In re Carter*, 182 F.3d  
 11 1027, 1029 n.3 (9th Cir. 1999). Once an exemption has been claimed, any party objecting  
 12 to the exemption “has the burden of proving that the exemptions are not properly claimed.”  
 13 *In re Davis*, 323 B.R. 732, 736 (9th Cir. B.A.P. 2005). “If the objecting party produces  
 14 evidence to rebut the presumptively valid exemption, the burden of production then shifts  
 15 to the debtor to produce unequivocal evidence to demonstrate the exemption is proper. The  
 16 burden of persuasion, however, always remains with the objecting party.” *In re Elliott*,  
 17 523 B.R. 188, 192 (9th Cir. B.A.P. 2014).

18 A trustee or creditor may object to a debtor’s proposed homestead objection  
 19 pursuant to one of the reasons listed in 11 U.S.C. § 522(g). “The purpose of § 522(g) is to  
 20 prevent a debtor from claiming an exemption in recovered property which was transferred  
 21 in a manner giving rise to the trustee’s avoiding powers, where the transfer was voluntary,  
 22 or where the transfer or property interest was concealed.” *In re Glass*, 60 F.3d 565, 568–  
 23 69 (9th Cir. 1995). This includes situations where a debtor “fraudulently transferred  
 24 property and then was not honest in reporting his assets or prepetition transfers.” *Id.*  
 25 Importantly, Section “522 does not give courts discretion to grant or withhold exemptions  
 26 based on whatever considerations they deem appropriate. Rather, the statute exhaustively  
 27 specifies the criteria that will render property exempt.” *Law v. Siegel*, 571 U.S. 415, 423–  
 28 24 (2014).

1       **IV. Analysis**

2       This case presents a rather straightforward issue, but in an interesting posture. The  
 3 Trustee argues that the bankruptcy court erred in denying Debtor's requested homestead  
 4 exemption. (Doc. 9). Usually, if a homestead exemption is denied, it is because a Trustee  
 5 or a creditor is objecting to the exemption for one of the reasons listed in Section 522(g).  
 6 *See In re Elliott*, 523 B.R. 188. Here, however, after notice and an opportunity to respond,  
 7 there were no objections from any creditor and no objections from the Trustee. (Doc. 10  
 8 at 5). In fact, the Trustee provided the Court with a "report of no objection and request for  
 9 entry of order," along with a proposed order *to grant* Debtor a homestead exemption. (Doc.  
 10 at 10) (emphasis added). Nonetheless, the bankruptcy court denied the exemption. It  
 11 does not appear that a hearing was held, and the only record this Court has of the denial is  
 12 the single page order stating that "11 U.S.C. section 522(g) precludes the debtor from  
 13 asserting a homestead exemption in this case." (Doc. 1 at 7).

14       As the bankruptcy court's order does not explain the basis for denying the order, the  
 15 Court does not have adequate information to conclude whether the homestead exemption  
 16 was properly denied or whether, as the Trustee argues, the Debtor is entitled to her statutory  
 17 homestead exemption. It is clear from the record that there were no objections to the entry  
 18 of Debtor's exemption, yet, the Court may have had independent grounds to deny it.  
 19 However, those grounds are not articulated with specificity and the Debtor was not given  
 20 the opportunity to meet her burden of producing "unequivocal evidence to demonstrate  
 21 the exemption is proper," because the exemption was denied without briefing or argument.  
 22 *In re Elliott*, 523 B.R. at 192. Therefore, the Court finds that the bankruptcy court's denial  
 23 was done "without support in the record." *In re Retz*, 606 F.3d at 1196. For the reasons  
 24 set forth above, the bankruptcy court's order denying the Trustee's unopposed Application  
 25 for entry of Debtor's claimed homestead exemption is vacated, and the case is remanded  
 26 to the bankruptcy court for a determination of whether Debtor is entitled to a homestead  
 27 exemption.

28       Accordingly,

1           **IT IS HEREBY ORDERED** that the Order of the Bankruptcy Court denying  
2 Debtor's homestead exemption is **vacated and remanded** for determination of whether  
3 Debtor is entitled to a homestead exemption.

4           **IT IS FURTHER ORDERED** that the Clerk of Court shall enter judgment  
5 accordingly and dismiss this action.

6           Dated this 23rd day of July, 2020.

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12           Honorable Diane J. Humetewa  
13           United States District Judge  
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